

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS**

Local governmentCity of Grover Beach

Local Decision.....Application No. 01-018, Approved with conditions (see Exhibit E).

Appeal Number.....A-3-GRB-02-086

Applicant.....Horizon Seabright L.L.C.

AgentChris Skiff

Appellants.....Commissioners Sara Wan and Pedro Nava; Jon and Rosanna Seitz.

Project location.....1003 Front Street, Grover Beach, APN# 060-491-029, (see Exhibits A and B)

Project description.....Divide a .98-acre parcel with an existing residence into two parcels of 20,002.98 s.f. (Parcel 1) and 22,494.26 s.f. (Parcel 2).The project also includes the construction of a new 2,200 s.f. single-family residence on parcel 1.

File documents.....City coastal permit Application No. 01-018; City of Grover Beach Certified LCP; Biological Resources Assessment (Morro Group, august 22, 2001); Soils Engineering Report (Earth Systems Pacific, June 20, 2001); Cultural Resource Survey (Singer and Associates, August 5, 2001); Arborist Report (Carolyn Leach Consulting, November 30, 2001).

Staff recommendation**Project raises a Substantial Issue; Approval with special conditions of *de novo* permit application.**

Summary of Staff Recommendation

The applicant proposes to divide an existing parcel of 42,497.24 square feet into two parcels of 20,002.98 square feet (Parcel 1) and 22,494.26 square feet (Parcel 2). The project also involves the construction of a new 2,200 square foot single-family residence on Parcel 1, including development of a sediment retention basin, new driveway, and associated drainage improvements. The project site contains an existing 2,788 residence and is located on the upper banks of Pismo Lake. Pismo Lake and the sensitive wetland and riparian woodland habitat areas that surround it are part of the Pismo Lake State



California Coastal Commission
May 2003 Meeting in Monterey

Staff: J.Bishop Approved by:

Ecological Reserve.

The appellant's contend that the project is not consistent with the resource protection policies of the City of Grover Beach Local Coastal Program, which requires that new development be sited and designed to prevent adverse impacts to Pismo Lake, and be compatible with the continuance of the habitat area. Specifically, the project is inconsistent with LCP standards prohibiting the encroachment of new development within 50-feet of the dripline of a solid canopy oak woodland, as well as with standards that prohibit removal of Coast Live Oak trees. Moreover, the project does not provide adequate protection of the oak woodland habitat and the adjacent environmentally sensitive habitat area of Pismo Lake State Ecological Reserve because the proposed development will encroach within these habitat areas and will diminish their biological productivity. Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed.

In response to concerns regarding the proposed subdivision and associated improvements, the Applicant has submitted a modified project. Changes to the project include a new lot line configuration, as well as a relocated development envelope that moves structures away from sensitive habitat areas. In addition, the Applicant has requested that the proposed residence be removed from the project description. Therefore, the scope of this permit only includes the creation of a new parcel and a future development envelope.

Staff further recommends that the Commission **approve with conditions** the Coastal Development Permit for a land division and designation of one building envelope that minimizes impacts and protects the biological continuance of the adjacent environmentally sensitive habitat areas of Pismo Lake Ecological Reserve. These conditions include the following requirements:

- Submittal of Revised Final Plans;
- Revise development envelope to be located outside of LCP required 50-foot buffer areas;
- Placement of an open space deed restriction on habitat buffer areas;
- Inclusion of notification to the applicant and future landowners that any future development will require a separate analysis and Coastal Development Permit.

As conditioned by this permit, the project will be consistent with the City of Grover Beach certified Local Coastal Program.

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I. Local Government Action

On April 9, 2002, the Grover Beach Planning Commission adopted a resolution to deny this project. Following this decision the Applicant made changes to the proposal. On July 9, 2002, the Planning Commission again denied the revised project. On appeal, the Grover Beach City Council, in local permit #01-018, approved a coastal development permit for a subdivision; the construction of a new 2,200 square foot single-family residence; and construction of a driveway, retaining wall, sediment retention basin, and associated drainage elements. The action is subject to 52 Conditions of Approval (See Exhibit E for details).

The City's action grants a coastal development permit for a land division, construction of a new 2,200 square foot single-family residence, construction of a sediment retention basin, construction of a retaining wall, and construction of a driveway to serve the newly created parcel. Among other things, the City's conditions of approval require that development be performed in accordance with the City of Grover Beach Zoning Ordinance. Additional conditions to protect resources included submittal of an engineered grading plan, the use of temporary drainage control measures during site preparation, the use of natural colors, submittal of landscape plans, maximum building height of 18.5 feet measured from average natural grade, use of water trucks and/or sprinkler systems to minimize airborne dust, requirements to maintain the sediment retention basin, and include splash boxes under rain gutter downspouts, to name a few.



The complete text of the City's findings and conditions of approval can be found in Exhibit E.

II. Summary of Appellants' Contentions

The appellants, Jon and Rosanne Seitz, and Commissioners Wan and Nava, have appealed the final action taken by the Grover Beach City Council (local permit #01-018), on the basis that approval of the project is inconsistent with policies of the City of Grover Beach Local Coastal Program with respect to environmentally sensitive habitat areas. Specifically, they contend that the approved project encroaches within the 50 foot oak woodland buffer area required by the LCP, and will have adverse impacts to the adjacent Pismo Lake State Ecological Reserve. The appellants' contentions can be found in Exhibit F.

III. Standard of Review for Appeals

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is within 100 feet of a wetland.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to approve a coastal development permit for the project. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the first public road and the sea, which is not the case with this project.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.



MOTION : *I move that the Commission determine that Appeal No. A-3-GRB-02-086 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO ADOPT SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-GRB-02-086 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

V. Substantial Issue Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The project site is located at 1003 Front Street in the City of Grover Beach, APN 060-491-029. The existing 42,497.24 square foot (.98-acre) parcel is located on the upper banks of Pismo Lake (see Exhibits A & B). The parcel is situated immediately adjacent to the Pismo Lake State Ecological Reserve. There is an existing house and driveway on the southern portion the parcel. The site slopes gradually to lower elevations near the northern property line, dropping off dramatically in the form of a steep bank meeting the waters edge of Pismo Lake.

As approved by the City of Grover Beach, the project includes a land division of the existing .98-acre parcel that will result in two parcels. Parcel 1 is proposed to be 20,002.98 square feet and Parcel 2 is proposed to be 22,494.26 square feet. The project also includes the construction of one new single-family residence on Parcel 1, approximately 2,200 square feet in size. There is an existing 2,788 square foot residence on Parcel 2 (see Exhibit C).

In addition to the new home on Parcel 1, the applicant proposes to construct a sediment retention basin, a new driveway, retaining wall, and improved drainage features to support the new development. The retention basin is located at the top of the bank of Pismo Lake and is near the dripline of a 42" Coast Live Oak tree. A low retaining wall is proposed where the new driveway would split apart from the existing driveway. The proposed home and retaining wall would be located in close proximity to a large 84" Coast Live Oak tree situated near the center of the existing lot. There is an existing drainage easement that



runs through the property extending from 2nd street to Front Street on the westerly side of the property. The current drainage easement is designed to convey surface drainage from offsite properties and settle on the site. The project includes modifications to the drainage easement so that the easement will be located outside of the building envelope of the proposed residence.

Commission staff conducted a field visit to the site November 6, 2002, to observe the site and its relative location to the oak woodlands and wetland habitat of Pismo Lake (See Exhibits B & D for photos). The property contains an abundance of willow and native Coast Live Oak trees. The unique grandeur of the 84" Oak is the predominant natural feature on the site. The entire northern property boundary contains riparian/wetland vegetation intermixed with larger Coast Live Oak trees. Together they form a rich mosaic of vegetation best described as environmentally sensitive Riparian Oak Woodlands. Subsequently, the Commission has raised concerns with the City approved subdivision and related improvements.

Following concerns raised, the applicant has been working with Commission staff on a modified proposal that avoids resource impacts and maximizes protection of the sensitive habitat areas. Changes to the project include a new lot line configuration resulting in two new parcels (Parcel 1 = 22,044.45 and Parcel 2 = 22,452.79), as well as a modified development envelope that moves new structures away from sensitive habitat areas. The Applicant has requested that the residence originally proposed on Parcel 1 be removed from the project description (See Exhibit G).

B. Substantial Issue Analysis

1. Environmentally Sensitive Habitat Areas

1.1 Appellant's Contentions

Appellants Wan and Nava contend in part that:

- ⇒ *The proposed development is located on the upper banks of the Pismo Lake State Ecological Reserve, which supports a variety of sensitive plants and animals and is protected by the LCP. The close proximity of the proposed lot and residence to the sensitive Oak Woodland, intermixed Riparian Woodland, and Pismo Lake is incompatible with the protection and continuance of these habitats, inconsistent with the LCP.*
- ⇒ *The property and adjacent Riparian Oak Woodland area supports numerous native oak trees and willows. According to the plans, the new house and sediment retention basin will be located less than 50 feet from the dripline of the solid oak canopy, inconsistent with Policy 9(d) of the LCP.*
- ⇒ *In addition, the proposed project is inconsistent with Policy 9(a) of the LCP prohibiting the removal of Coast Live Oaks except for emergency situation, as it will result in the removal of one oak tree adjacent to the existing driveway.*



Appellants Jon and Rosanne Seitz have appealed the project based on a number of issues. Some of their contentions are not directly related to the projects consistency with the certified LCP. For example, they contend that development within the Bagwell Tract (the original subdivision that created the subject parcel) is limited to the four (4) original lots previously approved by the Commission in 1978. The current certified LCP does not contain density or subdivision standards specific to the Bagwell Tract, nor does the original permit issued for the Bagwell Tract specifically prohibit new development in the future. Therefore, some of their contentions are not applicable here. Only those contentions directly related to the certified LCP will be analyzed for consistency in this report. Generally, their contentions are the same as those of Commissioners Wan and Nava with the addition of two LCP related appeal contention. The following contentions are included in their appeal:

⇒ *Development will occur below the sixty (60) foot contour in violation of Section 9(d) of the City's Local Coastal Program.*

⇒ *The City did not follow its Zoning Code in approving the General Development Plan*

1.2 Local Coastal Program Provisions

The following polices of the City of Grover Beach LCP address the environmentally sensitive habitat areas of Pismo Lake and Meadow Creek:

Inland Resource Area - Pismo Lake and Meadow Creek (Northeastern Branch)

Action Standard 3. *A natural buffer area shall be established between the riparian habitat area of Meadow Creek and the adjacent upland areas to the south. This buffer zone shall be of sufficient width to provide essential open space between the environmentally sensitive habitat area and any development. The actual width of this buffer shall be determined by precise ecological studies which define and measure the functional capacity of the Meadow Creek ecosystem. Development upland of the environmentally sensitive habitat area and its adjacent buffer shall be sited and designed to prevent impacts which would significantly degrade the Meadow Creek and downstream Pismo Lake environs, and shall be compatible with the continuance of those habitat areas.*

Inland Resource Policy 9(a). *The removal of Coast Live Oaks and of Shagbark Manzanita from the developable as well as undevelopable land in the vicinity of Pismo Lake shall be prohibited except for emergency situations. Removal of vegetation, grading and other earth-moving activities in developable areas shall be minimized. Impacts of such activities shall be shown in site and grading plans and shall meet with the approval of the City. Landscaping in developable areas here shall be compromised primarily of native vegetation and shall be compatible with surrounding native vegetation.*

Inland Resource Policy 9(b). *No development shall occur within 50 feet of the dripline of a solid canopy oak woodland.*

In addition, appellants John and Rosanne Seitz contends the project is also inconsistent with Inland



Resource Policy 9(d), which states:

Inland Resource Policy 9(d). *As a condition of development approval lands below the 60-foot contour at a minimum in the Meadow Creek uplands areas shall be dedicated to the City of State Department of Fish and Game as public open space as an integral portion of the Pismo Lake Ecological Reserve.*

1.3 Substantial Issue Analysis and Conclusion

The above cited land use policies require that new development, such as the proposed house, driveway, retaining wall, and sediment retention basin, must be compatible with the environmentally sensitive habitat areas of Pismo Lake Ecological Reserve. Any development adjacent to environmentally sensitive habitat areas must be compatible with the protection and long-term continuance of these areas (Action Standard 3). More specifically, the policies in the LCP contain strict protections to avoid adverse impacts to native Coast Live Oak trees (Inland Resource Policy 9a and 9b).

The appellants' contentions raise valid concerns given the location of the subject site. The oak woodland protection Policy 9(b) requires a buffer area of 50-feet from the dripline of a solid canopy oak woodland. According to the plans submitted by the applicant, the new house and sediment retention basin will be located less than 50-feet from the dripline of the solid oak canopy.

As noted by the appellants, the approved project fails to meet the required minimum oak woodland setback of 50 feet and intrudes to within only a few feet of the environmentally sensitive oak woodland canopy dripline. The project location is a sensitive area where a 50-foot buffer is needed to carry out LCP Action Standard 3, given the site's close proximity to the State Ecological Reserve. Aside from two small grassy areas on the northwest and southeast property corners, the site is abundantly vegetated with riparian willows and mature oak trees. According to the Biological Assessment submitted by the applicant, the riparian community of Pismo Lake is classified as Central Coast Arroyo Willow Riparian Forest habitat. This habitat type is considered sensitive by the California Department of Fish and Game (R. Holland 1986). The Pismo Lake State Ecological Reserve is located directly to the north and in close proximity of the property.

In the report to the City Council, City staff concluded that the 84-inch oak is not a "solid canopy of an oak woodland", but is a single tree with poor canopy. While the City made this finding to support the proposal to build, further assessments reveal that this finding is not on point. The following was written by V.L. Holland (Cal Poly State University):

"The term "woodland" is used instead of "forest" because woodlands tend to be more open and sunlit, their canopies sometimes touching, but rarely overlapping. Woodlands are typically found below 5000 feet in soils too dry to support a forest. They are found within a 50-mile radius of the coast, out of the influence of salt spray. Fog is common in these areas. Soils are typically well drained. Although certainly not limited to these areas, coastal live oak woodlands are quite common in the ravines and moister drainages between grassy hillsides. These woodlands are also common on north-facing slopes."



Based on the site visit from staff and an evaluation from a Coastal Commission biologist, both the 84" oak on the property and the 42" oak located on the north-facing slope of the Preserve, fall into this category. These oak trees, especially the large 84' oak, must be considered part of the solid canopy oak woodland described in the LCP.

In addition, Policy 9(a) prohibits the removal of Coast Live Oaks. According to the Initial Study prepared by the County one smaller 3' oak tree is to be removed. While the applicant has subsequently agreed verbally not to remove these trees, the conditional approval by the City of Grover Beach does not specifically contain this condition.

Appellants Jon and Rosanne Seitz also contend that the project is inconsistent with Policy 9(d) of the City's LCP. The Policy states that as a condition of approval for development on lands below the 60- foot contour at a minimum in the Meadow Creek uplands area shall be dedicated to the City of State Department of Fish and Game as public open space as portion of the Pismo Lake Ecological Reserve. Presumably this Policy is intended to protect the Ecological Reserve and provide for the maximum amount of open space surrounding its sensitive habitat areas.

At the Planning Commission meeting, the applicant and City staff took the position that because the project is not located within the Meadow Creek uplands, Policy 9(d) does not apply. Part of the problem here is that the LCP does not clearly define the exact location of the "Meadow Creek" upland area. However, it is clear that the project site is upland and in close proximity to Meadow Creek (this creek drains directly into Pismo Lake). Even more problematic and fundamental to this consistency analysis, is the fact that many of the existing homes in this area are currently situated well below the 60-foot contour. In fact, the existing house on the subject property shows a finished floor elevation of 54 feet. Based on a recent site visit, it is clear that this is also the case with the majority of existing homes in the neighborhood. To apply this policy here would mean that a large part of the existing neighborhood, as well as the entire subject parcel, would have to be given to the City or State as dedicated open space. In this case, especially given the topographic location of the development, staff does not feel that this contention should be applied here. Therefore, no substantial issue exists with respect to the projects conformance with Policy 9(d).

Finally, the appellants Jon and Rosanna Sietz contend that the project is inconsistent with the processing requirements of the City's Zoning Ordinance Section 9106.3 (See Exhibit F). This section requires that general elements of new development plans (i.e., land use, streets, topography, groundcover and vegetation, utilities, economic impacts, drainage patterns, environmentally sensitive areas, and archaeology) be addressed, by means of charts, maps, and text material, in new development proposals. The purpose of this section is to provide decision makers and the public with a level of detail necessary to understand general resource issues and the conceptual designs of a new development project. In this case, the Planning Commission reviewed the proposal on two separate occasions, each time with an increased level of understanding of the proposed project. A review of materials and the staff report submitted to the Planning Commission indicate that the 9 elements required by the zoning ordinance were generally included. Commission staff believes that decision makers and the public were aware of the resource issues and general design concepts presented here. Ultimately, the City Council approved through resolution both general and specific plans presented by city planners and the Applicant (see Exhibit E).



Therefore, no substantial issue exists with respect to the projects conformance with Zoning Ordinance Section 9106.3.

In conclusion, the City approval does not provide the required protective buffer for oak woodlands as required by Action Standard 3 and Policy 9(b). Nor does the local approval protect the Coast Live Oaks on the site, as required by Policy 9(a). **Therefore, a substantial issue is raised by these appeal contentions.**

VI. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** the Horizon Seabright L.L.C. coastal development permit with conditions.

MOTION: *I move that the Commission approve Coastal Development Permit No. A-3-GRB-02-086 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified San Luis Obispo County Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VII. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.



3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Approved Development.** This coastal development permit authorizes the following development, subject to Executive Director approval of final plans, and compliance with all special conditions below:
 - (a) Division of the existing .98-acre parcel that will result in two parcels. Parcel 1 is 20,044.45 square feet and Parcel 2 is 22,452.9 square feet;
 - (b) Designation of one (1) new development envelope on Parcel 1.
2. **Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of final plans to the Executive Director of the Coastal Commission for review and approval. The final project plans shall show a development envelope with a minimum setback of 50 feet from the dripline of any solid oak woodland canopy and shall demarcate new parcel boundaries in substantial conformance with the revised project plans submitted to the Commission titled *Revised Tentative Parcel Map No. 2437* by Cannon and Associates dated March 4, 2003.

The plans shall demonstrate the following changes to the project:

- a) **Development Envelope.** All future development (i.e., residence, driveway, all impermeable surfaces, garages, retaining walls, lawns and ornamental landscape areas, or any other structures, etc.) shall be confined to areas within the revised development envelope, as shown in Exhibit G.
- b) **Open Space Area.** There shall be no development outside of the development envelope demarcated on the final plans. The Open Space Area shall be designated on the final plans, as shown on Exhibit G.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to the special conditions. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved plans shall occur without a Commission amendment to coastal development permit unless the Executive Director determines that no amendment is necessary.



3. Open Space.

A. No development, as defined in section 30106 of the Coastal Act shall occur in Open Space Area of Parcel 1, as depicted in Exhibit G, and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI OF THIS PERMIT, the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described and shown on Exhibit G attached to this staff report.

4. **Future Development Restriction.** This permit is only for the developments described in coastal development permit No. A-3-GRB-02-086. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, a change in the density or intensity of use land, shall require an amendment to Permit No. A-3-GRB-02-086 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.
5. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

VIII. De Novo Coastal Permit Findings

1. Environmentally Sensitive Habitat Areas

1.1 LCP ESHA Protection Standards

Please see the Action Standard 3 and Policies 9(a), and 9(b) cited on page 7 of this report.



1.2 De Novo Analysis

As described in the Substantial Issue findings, incorporated herein, the project is in conflict with the provisions of Policies 9(a) and 9(b) protecting sensitive Coast Live Oak woodland habitats in the following ways:

- The proposed development would encroach with the minimum 50-foot buffer which can adversely impact the oak woodlands onsite; and
- There are no assurances in the local approval that Coast Live Oak trees won't be removed

Inconsistent with Policies 9(a) and 9(b), the project will degrade riparian oak woodland and wetland habitats through the construction of a new house, sediment retention basin, retaining wall, and driveway. These development activities, which will occur within and adjacent to sensitive habitat areas, will adversely impact oak trees, alter natural drainage patterns, and contribute sediments and pollutants to coastal waters (e.g., Pismo Lake).

Action Standard 3 requires that precise ecological studies, to define and measure the functional capacity of the Meadow Creek ecosystem, be performed prior to approving new development. As stated in the introduction of the submitted Biological Assessment (Morro Group Inc., 2001), "a formal wetland delineation was not performed, however a wetland assessment based on U.S Army Corps of Engineers (ACOE) methodology found no potential wetland areas within the property boundary." Following the appeal, Commission staff conducted a site visit to document the spatial extent of sensitive wetland and oak woodland resources. Following this visit a consultation with the Commission's staff biologist was performed. It was determined that a minimum 50 foot buffer would be required to assure protection of the sensitive habitat.

The locally approved project includes residential development within (or at a minimum directly adjacent to) ESHA, including wetland and riparian oak woodland habitats, and is thereby further inconsistent with LCP Action Standard 3. In addition to removing existing habitat areas, the development will disrupt adjacent habitat by introducing noise and light to the natural areas, and potentially result in the invasion of exotic vegetation. Moreover, by developing within and adjacent to the oak woodland habitat, the project will remove and degrade areas that contain Coast Live Oak saplings and other resources that support the biological productivity and regeneration of the woodland. The proposed development will also have ongoing impacts on the functional capacity of the Pismo Lake wetland and oak woodland areas associated with the coverage and fragmentation of habitat, the alteration of natural hydrological dynamics, shading of woodland and wetland plants, and an increase in the intensity of residential use. As a result, the project is not compatible with the continuance of ESHA, in conflict with LCP Action Standard 3.

Construction activities can adversely impact coastal water quality by discharging debris and pollutants into watercourses, and by causing erosion and sedimentation through the removal of vegetation and the movement of dirt. The increase in impervious surfaces that will result from any new development project on this site will also impact coastal water quality by altering natural drainage patterns and providing areas where the accumulation of pollutants will eventually be carried into Pismo Lake by storm water. As described previously, the project has been modified to no longer include the development of a single-



family residence. Also, associated site improvements including, drainage and erosion control elements, driveway construction, and landscaping have been eliminated from the project description.

Because the specific elements of construction activities are not covered under this permit, Special Condition 5 has been added to this permit approval. The purpose of Special Condition 5 is to inform applicants and subsequent owners that a permit is required for all future development as defined in Public Resource Code section 30106, including a change in the intensity or density of use of land. It is simply to put permittees on notice about the need to obtain a coastal development permit for non-exempt development in the future. At that time, a complete evaluation of all coastal resource impacts will be conducted for consistency with the certified LCP.

1.3 De Novo Conclusion

The oak woodland and wetland habitat located adjacent to the existing parcel is an important coastal resource, interconnected with the larger Pismo Lake Ecological Reserve and unique to this area of Grover Beach. The presence of Pismo Lake Ecological Reserve directly to the north of the property has helped to protect these sensitive habitat areas. Thorough application of LCP habitat protection standards in this area is essential to preserve the healthy biological continuance of the oak woodland and wetland habitat.

The project as approved by the City of Grover Beach does not adequately address the LCP standards protecting the sensitive habitat areas of Pismo Lake Ecological Reserve. Therefore, the special conditions attached to this permit are necessary to ensure that the development is carried out in a manner that will be compatible with the continuance of these habitats, as required by the LCP. To resolve these potentially harmful impacts and address the policy inconsistencies, the following Special Conditions have been attached to the project.

Special Conditions 1 and 2 limit development within a modified development envelope site to be in conformance with LCP habitat protection policies. The Final Project Plans remove development from areas within the required 50-foot minimum oak woodland setback. As a result, sensitive oak woodland and wetland habitat areas surrounding the project site are buffered and protected.

Special Conditions 3 and 4 require that the undeveloped buffer area on the property shall be preserved in open space, subject to a deed restriction that prohibits uses that are inconsistent with habitat protection and preservation. These conditions shall run with the land in order to ensure that potential future owners are aware of the constraints associated with this site.

Thus, the Commission finds that as conditioned the revised project is consistent with the relevant policies contained in the City of Grover Beach certified Local Coastal Program.

IX. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures



available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

